APPEAL NO. 010753

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 20, 2001. The hearing officer resolved the disputed issues by determining that the appellant (claimant) did not sustain a compensable injury; that the date of the alleged injury was _____; and that the respondent (self-insured) was relieved from liability under Section 409.002 because the claimant failed to timely notify her employer of her alleged injury pursuant to Section 409.001. The claimant appeals and seeks reversal on sufficiency grounds. The self-insured responds and urges the Appeals Panel to affirm the hearing officer's decision and order in all respects.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury. The hearing officer found that the evidence was insufficient to establish a causal relationship between the claimant's employment duties as a library clerk for the (employer), and her diagnosed rotator cuff impingement. The claimant alleged that she first felt discomfort in her right shoulder immediately after beginning work in the library August 4, 2000, but thought it was arthritis. Shortly thereafter, the claimant testified, she went to see her family physician on _____, who diagnosed her with bursitis and ordered an MRI. The claimant alleged to have sustained her shoulder injury from the constant shelving and scanning of books for the less than two months she was working in the library. The MRI results, imparted to the claimant on December 5, 2000, showed rotator cuff impingement and the claimant notified her employer of her workers' compensation claim, at the latest, December 6, 2000.[1]

However, the self-insured presented evidence that the claimant's doctor restricted her duties at the library on _____, and that his records noted her work as possibly connected with her injuries at her first appointment regarding her right shoulder, on _____. The principal for the employer testified that the claimant was unhappy with her reassignment from the front office to the library, and that the claimant had some personnel problems while working at the main office.

The hearing officer did not err in determining that the claimant knew or should have known that her injury was related to her employment on _____. The claimant's medical records of that date show that, when she first complained of her right shoulder to her physician, she also described her new job duties in the library.

[1]The claimant testified, and the self-insured did not refute, that she verbally informed her employer of her injury on December 5, 2000, and that she turned in the workers' compensation claim forms December 6, 2000.

Even though the hearing officer found that the claimant had good cause for not reporting her injury until _____, she did not err in concluding that the self-insured is relieved from liability under Section 409.002 because of the claimant's failure to timely notify her employer pursuant to Section 409.001. The evidence adduced at the hearing showed that, at the very latest, the claimant had reason to believe her injury was related to her work on _____, when her doctor placed a work restriction on her, limiting the time she spent shelving books; _____, was also the date the doctor diagnosed the claimant with rotator cuff syndrome, not bursitis. The claimant reported her injury to the employer, at the earliest, December 5, 2000.

The parties presented conflicting evidence on the disputed issues. Pursuant to Section 410.165(a), the hearing officer is the sole judge of the weight and credibility of the evidence. The hearing officer resolves the conflicts and inconsistencies in the evidence and determines what facts have been established from the conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). This tribunal will not disturb the challenged findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951).

For these reasons, we affirm the decision and order of the hearing officer.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge